O/B.E.C.(Ref D&A)/48

1948 **File No.** 22/48

Legal Department

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Subject:—

Opinion cases Under the Bombay Essential Commodities (Regulation of Disposal & Acquisition) Order, 1947

P-4
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1948

O/B.E.C(Ref D&A)/48

File No.

G/22/48

Gen. 194 e.

C ONTENTS

Legal Department File No.O/B.E.C.(R. of D & A)/48.

Sr. No.	R.I. / O.No.	Subject	Pages.
		Opinions under the Bombay Essential commodities (Regulation of Disposal and Acquisition) Order 1947.	
		Clause 3.	
1.	1448 10.2.1948	Whether District Magistrate had authority to xx issue an order under clause 3 requiring every person who holds on 1st of each month Tur Dal Exceeding 6 Bengal Maunds, to declare his stock.	1-4.

S.I./12.7.56. 5c.

P.H.K. 25/7

N.C.S. 25/7

It appears that the District Magistrate, Kaira, in exercise of powers vested in him under clause 3 of the Bombay Essential Commodities (Regulation of Disposal and Acquisition) Order, 1947, has passed an order requiring everyth person, who holds on 1st of each month Tur Dal exceeding 6 Bengal Maunds, to declare his stock. In an appeal from a conviction for failure to make such declaration, a point has been raised on behalf of the appellant that the District -Magistrate could not issue such an order for want of any delegation in his favour by the Central Government to exercise the powers under section 3 of the Essential supplies (Temporary Powers) Act, 1946. The question raised for the consideration of the R.L.A. is whether there is any substance in this contention.

It is true that the powers under section 3 of the essential supplies (Temporary Powers) Act, 1946, have not been delegated to any authority subordinate to Provincial Government under section 4; but the order issued by the District Magistrate, Kaira, was not made by him in exercise of any of the powers under section 3. The powers under section 3 have been delegated to the Provincial Governments and in Exercise of those powers the Bombay Government passed the Bombay Essential Commodities (Regulation of Disposal and Acquisition Order, 1947. Under clause 3 of this Order, any person or class of persons holding stocks of any essential commodity in the City etc. would be required to declare such stocks to the Director of Civil Supplies, Bombay, etc. or the Food Controller, Bombay, and elsewhere to the District Magistrate concerned etc. When directed by a notice given in the manner prescribed in clause 8 and furnish such other information in respect of such stocks as the officer concerned may require. The notice given in the present case by the District

Magistrate, Kaira, relates to a class of persons requiring them to furnish a full and correct statement of the stock of Tur Dal. Evidently this notice is a direction issued by the District Magistrate, Kaira, in virtue of powers vested in him under clause 3 of the Bombay Essential Commodities (Regulation of Disposal and Acquisition) Order, 1947. The question relevant would, therefore, be whether the direction given by a notice by the District Magistrate, Kaira, amounts, to any redelegation of the powers of the Provincial Government. A statute which requires something to be done by a person would except in cases subject to the principle that delegate's non-protest delegare be complied with in general if the things were done by another on his behalf and by his authority. For, it would be presumed that there was no intention to prevent the application of general principle of law that 'qui facit per alium facit per se' unless there was something in either the language or the object of the statute which show that the personal act was intended. Otherwise a stricter construction would render the Act nonapplicable in most of the cases" (see Maxwell, pages 66-67). The Bombay Essential Commodities (Regulation of Disposal and Acquisition) Order, 1947, is made by the Provincial Government; and under clause 3(1) what is left to the District Magistrate is to direct by a notice any person or class of persons to furnish such information in respect of such stocks as he may require. It would not be possible for the Provincial Government to know which person or class of persons possessed the stocks and to what extent such stocks would require to be controlled. This could only be done by Executive officers who know the position of stocks and the needs of the people in the area under their jurisdiction.

S.I./12.7.56. 4c.

such direction given by the District Magistrate would be deemed to be on behalf of Government and by authority of Government. Consequently there is no question of re-delegation of powers of Government vested under section 3 of the essential Supplies (Temporary Powers) Act, 1946. There is, therefore, no substance in the contentions raised in the appeal.

P.M.L./9.2
Remembrancer of Legal Affairs.

U.R. to C.S.D. No.1449, dated 10th Feb. 1948.

S.I./12.7.56. 4c.